

JOHN PATRICK ROUND

v

THE QUEEN

Court: Elias CJ and Gault J
Counsel: S J Shamy for Applicant
K B F Hastie for Respondent
Judgment: 24 November 2005

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant applies for leave to appeal from a decision of the Court of Appeal dated 29 August 2005 dismissing his appeal against conviction. The applicant had been convicted of sexual violation by digital penetration. The defence was that the complainant was mistaken in her identification of the applicant as the person who had assaulted her. The complainant's identification of the applicant was supported by some evidence that his DNA was found around her mouth. In the Court of Appeal, the applicant maintained that trial counsel had failed to follow instructions in cross-examination of the complainant and in failing to call the applicant to give evidence to suggest how his DNA might have been transferred to the complainant indirectly.

[2] The Court of Appeal received affidavits from the applicant and his wife and an affidavit from trial counsel in response. None of the deponents was required for cross-examination. In addition to the affidavits, the Court of Appeal considered correspondence between the applicant and trial counsel and trial counsel's file notes. The Court concluded that the decision not to call the applicant was his own decision. Nor was the Court convinced that any miscarriage of justice resulted from the absence of evidence from the applicant explaining how transference of DNA could have occurred. The risk of transference of DNA was referred to in submissions and relied upon expert evidence as to the ease with which such transference could occur. The Court of Appeal considered that the absence of direct but speculative evidence of opportunity did not prevent the defence being put adequately. The Court did not accept that more aggressive cross-examination of the complainant would have benefited the applicant.

[3] She was firm in her identification and became firmer when questioned. No basis for questioning these assessments by the Court of Appeal such as could give rise to fear of miscarriage of justice has been put forward. No question of general or public importance arises. We are satisfied that it is not necessary in the interests of justice for this court to grant leave to bring the proposed appeal.

Solicitors:
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